

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FLORENTINO ADLAWAN, JR. ALIAS "BEMBOY"
ADLAWAN, AND VENANCIO KYAMKO ALIAS "TATA"
KYAMKO, ACCUSED-APPELLANTS.**

G.R. Nos. 100917-18. January 25, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

On May 3, 1991, the Honorable Gualberto P. Delgado, Presiding Judge of the Regional Trial Court, Branch 29, Toledo City, convicted the accused-appellants of the crime of Rape as follows:

"WHEREFORE, in view of the foregoing considerations, decision is hereby rendered in Crim. Case No. TCS-791 finding accused Florentino Adlawan Jr. alias "Bemboy" guilty beyond reasonable doubt of the crime of Rape under Art. 335 RPC as amended and hereby sentenced (sic) the accused to suffer the penalty of Reclusion Perpetua and to indemnify the complainant, Priscilla Canonigo, the amount of P30,000.00 and to pay the cost and further decision is hereby rendered in Crim. Case No. TCS-796 finding accused Venancio Kyamko alias "Tata", guilty beyond reasonable doubt of the crime of Rape under Art. 335 RPC as amended and hereby sentenced (sic) the accused to suffer the penalty of Reclusion Perpetua and to indemnify the complainant, Tita Ouano the amount of P30,000.00 and to pay the cost. However, accused in both cases are given full credit of their preventive imprisonment provided they complied with the rules and regulations of a convicted prisoner.

SO ORDERED."[1]

From this decision both accused appealed and in their Brief fault the trial court of one error:

"THE HONORABLE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF COMPLAINING WITNESSES THAT THEY WERE RESPECTIVELY RAPED BY THE ACCUSED ON JUNE 9, 1987, DISREGARDING THAT THEIR SINCERITY AND CANDOR ARE FULL OF SUSPICION; THEIR ALLEGATIONS ARE HIGHLY IMPROBABLE AND THEIR STORY INCREDIBLE; IN NOT HOLDING THAT THE TESTIMONIES OF ACCUSED AND THEIR WITNESSES CORROBORATE THE FACT OF VOLUNTARINESS ON THE PART OF COMPLAINANTS AS ACCUSED AND COMPLAINANTS WERE IN ROMANTIC MODE (SIC) BEFORE, DURING AND AFTER THE ALLEGED RAPED (SIC) AND IN NOT ACQUITTING THE ACCUSED ON THE GROUND OF REASONABLE DOUBT."[2]

In the two cases at bar, the respective accused-appellants do not dispute the fact of having had carnal knowledge with their respective complainants. They, however, deny having used any force or intimidation upon them and allege that these complainants voluntarily performed the sexual act with their respective partners.

The prosecution's evidence, as summarized in the People's Brief, are as follows:

"On June 9, 1987 at about 1:30 o'clock in the afternoon, Tita Ouano and Priscilla Canonigo went to the

Municipality of Pinamungajan on their way to Barangay Lamac, a remote interior barangay of Pinamungajan, in order to attend a fiesta (p. 7, tsn., Jan. 28, 1988). While they were waiting for a vehicle in going to Lamac, appellants Florentino Adlawan and Venancio Kyamko arrived and introduced themselves to Tita Ouano and Priscilla Canonigo (pp. 3-4, tsn., *ibid*). When it was already 3:00 o'clock in the afternoon and there was still no vehicle, Tita and Priscilla decided to walk toward Barangay Lamac (p. 4, tsn., *ibid*). Upon reaching a certain distance, appellants Adlawan and Kyamko who were trailing them, told them that they were also going to Barangay Lamac and would like to go with them (p. 4, *ibid*). After they had walked for some distance, appellant Kyamko informed them that there is a short cut, and because they do not know the way, they went with them (p. 5, tsn., *ibid*; p. 3, tsn., April 7, 1988). Later they (Tita Ouano and Priscilla Canonigo) noticed that they were being misled because they were going around without fix distance (p. 4, tsn., April 7, 1988). So they decided that both of them will just return to the Poblacion of Pinamungajan (p. 9, tsn., April 7, 1988). But they were not able to do so because Adlawan and Kyamko held each of them by pointing knives at them (p. 4, *ibid*). Thereafter, Adlawan and Kyamko dragged Priscilla and Tita to a house nearby (p. 5, tsn., April 7, 1988; pp. 5-6, tsn., Jan. 28, 1988). There at the house, Adlawan brought Priscilla to a separate room with a knife pointed at her and then pushed her down on the floor (p. 7, tsn., April 7, 1988). While she was down on the floor, Adlawan forcibly removed her trouser and T-shirt (pp. 7-8, tsn., *ibid*). Priscilla resisted Adlawan's (sic) attempt to remove her trousers, but because Adlawan was much stronger she became weak and later Adlawan was able to remove her pants, T-shirt and panty (pp. 8-9, tsn., *ibid*). Priscilla shouted for help but Adlawan covered her mouth with his hands (p. 3, tsn., May 11, 1988). Adlawan told her that even if she shout for help nobody will help them because they are the ones controlling the place (p. 3, *ibid*). Adlawan further told her that if he could not satisfy his desire he would kill her, at the same time continuously pointing the knife and pushing her stomach (p. 3, tsn., May 11, 1988). When she felt weak, Adlawan placed himself on top of her (*ibid*). He was able to have sexual intercourse with her for about thirty (30) minutes (pp. 3-4, tsn., *ibid*). All the while that she was being abused, Adlawan warned her not to report the incident to the police or else, he will kill her (pp. 4-5, tsn., *ibid*). After the intercourse, she was made to stand up (p. 4, tsn., *ibid*). When she stood up, she was staggering and she felt very weak as she was abused (pp. 2-3, tsn., July 19, 1988).

During the time Adlawan tried to abuse Priscilla Canonigo, Venancio Kyamko was also on the other room with Tita Ouano (pp. 4-7, tsn., Jan 28, 1988). Inside the room, Kyamko pushed Tita's head to the wall and told her not to move while the knife was pointing (sic) on her neck (p. 7, tsn., *ibid*). She struggled and tried her best to free herself but she was overpowered because of the strength of Kyamko (*ibid*). She struggled with Kyamko for about fifteen (15) minutes and thereafter she became weak and did not have enough strength to resist him (*ibid*). Thereafter (sic), she kicked Kyamko but the latter continued pointing the knife to her neck (*ibid*). After that, he removed her t-shirt and then her bra (*ibid*). She pleaded with Kyamko not to harm her, but instead gave her a fist blow on the stomach (*ibid*). Then he proceeded to tear her trousers and panty and after that, he undressed himself and inserted his penis to her vagina (p. 8, tsn., *ibid*). Tita Ouano cried and struggled hard but her two (2) hands were being held and she had no more force to resist (p. 9, tsn., *ibid*). Kyamko then laid on top of her and had sexual intercourse with her for thirty (30) minutes (*ibid*). When he was through, he let her dress up and warned her not to report the incident to the police or she will be killed (p. 10, tsn., *ibid*). Afterwards, they went out of the room and there she saw Priscilla Canonigo coming out of the other room together with Florentino Adlawan (*ibid*). She noticed Priscilla Canonigo had a slight injury at her neck (p. 11, tsn., *ibid*). She made a sign to Priscilla through her eyes that they will escape (p. 3, tsn., July 19, 1988; p. 11, tsn., Jan. 28, 1988). Suddenly, they both run (sic) but after reaching a distance of ten (10) meters, they were overtaken by Adlawan and Kyamko (p. 4, tsn., July 19, 1988, *ibid*). At 7:30 o'clock in the evening, Tita Ouano pleaded Kyamko to allow them to go to the Poblacion of Pinamungajan (p. 11, *ibid*). Appellants Kyamko and Adlawan acceded (p. 12, tsn., Jan. 28, 1988). While they were already walking, somebody along the way called Kyamko and Adlawan (pp. 11-12, tsn., *ibid*). When Kyamko and Adlawan stopped, Tita and Priscilla run (sic) away towards the place where the conductors of Jegans Liner were sitting on a bamboo bench facing the Municipal Building. Tita and Priscilla then proceeded to sit beside the bus conductors (p. 12, tsn., *ibid*). Kyamko and Adlawan, however, followed the two women and tried to pull them away. But Tita Ouano

requested one of the bus conductors not to leave them because appellants had bad intentions on them (p. 12, *ibid*). The conductor agreed to their request (p. 13, *ibid*). Appellants told them to just go with them so that nothing will happen (*ibid*). They resisted. One of the bus conductors advised appellants not to force the women and they left (p. 14, *ibid*). Thereafter, a woman by the name of Priscilla Gorres arrived at the scene and asked them what happened to them (*ibid*). When they could not answer, as they were both still in shock, Priscilla Gorres invited them to pass the night in her house (*ibid*). They readily accepted the invitation.

At the house of Priscilla Gorres, Tita Ouano and Priscilla Canonigo cried while narrating the harrowing experienced (*sic*) they had undergone in the hands of appellants Florentino Adlawan and Venancio Kyamko (p. 15, *tsn.*, Jan. 28, 1988). After hearing their stories, Priscilla Gorres silently went downstairs and reported the matter to the police (p. 15, *ibid*). When Priscilla Gorres came back, she was accompanied by Eulogio Kyamko, the Station Commander of Pinamungajan, who invited Tita Ouano and Priscilla Canonigo to the Police Headquarters for investigation and assured them that they will not be harmed (*ibid*). At the headquarters, their affidavits were taken (p. 16, *tsn.*, *ibid*). When they were through giving their statements, a physician was called (*ibid*).

Dr. Alfredo Soberano, Medical Health Officer of Pinamungajan, arrived at the headquarters at around 1:00 o'clock dawn, as he was requested by the police to conduct a physical examination on the bodies of Tita Ouano and Priscilla Canonigo (pp. 3-4, *tsn.*, Jan. 8, 1990; p. 16, *tsn.*, Jan. 28, 1988). From the physical examination of Tita Ouano, Dr. Soberano observed the following: there was a slight vaginal canal irritation on her; he did not find old scar on the vagina (*sic*) wall; there were some injuries and abrasions on her body; seminal fluid was present, which indicates that she had recent sexual intercourse; she was still bleeding because she was on her fourth day of menstruation; and the victim was a virgin (pp. 4-5, *tsn.*, Jan. 8, 1990).

As to Priscilla Canonigo, Dr. Soberano found seminal fluid in her vagina; that her vaginal canal admits two (2) fingers size 2; there were multiple abrasions on the right side of the neck and that she was a virgin at the time she was raped (p. 6, *tsn.*, *ibid*). Both of them were crying when being examined by Dr. Soberano (p. 8, *tsn.*, Jan. 8, 1990)."[3]

Upon review of the prosecution evidence it is patent that the sexual contact between the accused-appellants and the complainants could not have been voluntary. There are several indications contrary thereto, as shown by the testimonies of the prosecution witnesses.

The accused-appellants, in their attempt to discredit the testimonies of the complainants, point out some inconsistencies which they have committed. The accused-appellants capitalize, first and foremost, on the lack of perfect identity between both complainants' sworn statements executed during the investigation which was conducted right after the alleged crime and their testimonies in open court. In their affidavits they stated that they started from Poblacion, Pinamungajan, going to Barrio Lamak together with the accused Florentino (Bemboy) Adlawan and Venancio (Tata) Kyamko.[4] In open court, complaining witness Tita Ouano testified that while waiting at Poblacion Pinamungajan for a truck that would go to Lamak, the accused approached them and introduced themselves. Since it was already 3:30 p.m., they decided to proceed to Lamak by walking and the two (2) accused also went with them.[5] The other complaining witness, Priscilla Canonigo, on the other hand, declared that they alone proceeded to Lamak from Pinamungajan, and after walking for quite a distance they were overtaken by the accused Florentino Adlawan and Venancio Tata Kyamko.[6] The accused-appellants point out another inconsistency and this refers to the manner in which they were brought to the house where the alleged crime was committed. In their affidavit, they stated that they went up to a house immediately while in open court, they claimed that they were dragged to a distance of about 1/2 kilometer before they reached the house.[7]

We do not find these inconsistencies, which merely refer to minor details, sufficient to cast a cloud of doubt upon the credibility of the prosecution witnesses. These inconsistencies are not reason enough to depart from the

well-entrenched doctrine that the findings of the trial court, giving full credit to these witnesses, must be given great weight on appeal.

Moreover, We have previously held that discrepancy between the witnesses' testimony in court and the affidavits they previously signed as to minor details regarding the commission of the crime does not constitute sufficient ground to impeach the credibility of said witnesses where on material and important points their declarations are consistent.[8] Besides, We have been less exacting when it concerns inconsistencies or apparent contradictions committed by rape victims. We cannot expect a rape victim to keep an accurate account of the traumatic and horrifying experience she went through.[9]

Thus, We cannot be convinced that Priscilla Canonigo's failure to exactly state whether or not she fell unconscious during the moment she was being sexually abused is a sufficient circumstance to entirely discredit her as a witness. We cannot expect the rape victim to remember every ugly detail of her traumatic experience, especially so since she might in fact be trying not to remember them.[10] It is understandable that there would be minor lapses or inaccuracies when she is made to recount her experience at different occasions. The mere circumstance that she was testifying in the presence of strangers on an intimate matter not usually even mentioned in public might have caused her not (only) a little embarrassment and confusion that rendered her narration less than perfect.[11]

To impress upon this Court that the accused-appellants' carnal knowledge with their respective complainants was with the consent of the latter, they claim that it is quite amazing why the complainants did not go back to Poblacion Pinamungajan at the earlier stage of their travel and why they stayed in the company of the accused-appellants, walking a distance of ten (10) kilometers and/or four (4) hours if they really did not have that desire to be with the accused-appellants.

We do not find anything amazing in such a narration. The complainants were tricked by the accused-appellants into going with them through a footpath they claimed to be a shortcut towards Lamak. The complainants, who were unfamiliar with the said path, had no choice but to follow the lead of the accused-appellants. Believing that they were taking the shorter route to their destination, they walked on for several hours. They started to doubt only when it appeared that they were not heading to any definite direction. It was just logical that they would decide to go back when they lost hope of ever reaching their destination.

The accused-appellants also want this Court to take against the complainants the fact that they did not shout for help despite the fact that they were allegedly threatened, forced and dragged by the appellants to the house. The complainants' reactions are understandable. The threat of being killed especially when in an unfamiliar place, is sufficient to mummify complainants and make them submit to the desires of the accused-appellants.

The accused-appellants further claim that based on the narration of complainant Priscilla Canonigo of how her clothes were taken off, i.e., with just one hand, and the other hand holding a knife pointed at her side, she could not have been held tightly to prevent any determined struggle or resistance on her part. This, according to the accused-appellants, will point out that the complainant did not offer any resistance. Since she did not offer any resistance, the complaint for rape does not have basis.

We cannot fault the complainant for not running away at the first opportunity she had. This cannot be construed as a showing of consent to the sexual intercourse, even as We held in another case that the fact that while coitus was going on between complainant and her abuser, she had a free hand to resist the accused's further advances is no argument that no resistance was employed.[12] Besides, the law does not impose a burden on the rape victim to prove resistance. What has to be proved by the prosecution is the use of force or intimidation by the accused in having sexual intercourse with the victim.[13] Threatening the victim with a knife is sufficient to cow the victim,

and it constitutes an element of rape.

Rape is a crime which is not normally committed in the presence of witnesses, hence, courts merely rely on the credibility of the complainant's testimony as weighed against the credibility of the accused.[14]

We find no substantial ground to discredit the testimonies of the complainants as to the allegation that their sexual acts with the respective accused-appellants were consequences of the use of force or intimidation. Considering that their testimonies are clear and free from any substantial contradiction and their sincerity and candor free from suspicion when they said that they were raped, they say in effect all that is necessary to show that rape was committed.[15] Moreover, their testimonies are substantially corroborated by the medical findings of the physician who examined them on the very evening when the crime was allegedly committed. These findings, which included slight physical injuries resulting from the use of force by their abusers, had been presented by the examining physician at the trial.

We find the defense of the accused-appellants simply implausible, if not completely incredible. We agree with the trial court's findings which We quote:

"The following established facts negate the defense that both accused had romantic relations with the complainants (Instant love and instant sex).

1. Both complainants testified that they were on their way to attend a fiesta in Barangay Lamak, a remote barangay of the Municipality of Pinamungajan. If we are to believe the defense of the accused, that they had a romantic relations with both complainants why the sudden return of the complainants to Poblacion of Pinamungajan instead of proceeding to Barangay Lamak and spend the whole night and satisfy their lust. The sudden return of the complainants to Poblacion only indicated that some unusual incident happened to them;
2. The physical evidence consisting of Exhs. D, E and F of Tita Ouano and Exhs. C, D, E, and F of Priscilla Canonigo consisting of their torn trouser, torn T-shirt and torn bra and panty which indicate and prove that force had been applied against them;
3. Identical defenses raised by both accused, that they had romantic relations with the complainants to its minute details impressing to the Court of instant love and instant sex is too much of a coincidence, very illogical and inherently improbable, considering that both accused and both complainants were just introduced to each other in matter of hours before the incident and considering further, that both accused are not extra irresistible and no evidence was adduced to show that the complainants are nymphet or of loose moral character (Pp. vs. Gasendo L-41052 30 September 1982). On the contrary the identical features in their testimony cannot but generate the suspicion that the material circumstances testified to by both accused were integral part of a well thought and pre-fabricated story (Pp. vs. Madriaga IV G.R. 73057 8 March 1989);
4. The most fatal and most damaging fact would paractically (sic) demolished (sic) the whole defense of the accused similar to a house of cards is the behavior of the complainants immediately and spontaneously after the commission of the acts of the outrage adequately supports their claim that by force and intimidation they were raped by the accused. When complainants upon returning to Poblacion, Pinamungajan, lost no time in reporting the outrage to the owner of the house a certain Priscilla Gorres and the police and even in the middle of the night submitted themselves for physical examination by Dr. Soberano. All these actuations are certainly inconsistent with the allegations of the accused that they had romantic relations with the complainants (Pp. vs. Murallion G.R. 85734 September 30, 1990);
5. Lastly, corroborating the testimony of the complainants is the testimony of Dr. Soberano, as to this findings during the physical examination to both complainants, Dr. Soberano testified that he found seminal fluids on both complainants, indicating that there was recent sexual intercourse. He stated further that both were physically virgins. There were physical injuries, anal irritation on Tita Ouano and abrasions on the right side of

the neck of Priscilla Canonigo. He further testified that both complainants were crying at the time of the examination. The totality of the findings of Dr. Soberano dissolves any scintilla of doubt of their guilt and overturns the presumption of their innocence satisfying the quantum of evidence on moral certainty." [16]

In the light of the foregoing and on the basis of the applicable laws and jurisprudence on the matter, We hereby AFFIRM the appealed decision in toto, with no pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Nocon, JJ., concur.

[1] Decision, pp. 25-26; Rollo, pp. 57-58.

[2] Appellants' Brief, p. 6.

[3] Appellee's Brief, pp. 2-10.

[4] Appellants' Brief, p. 7.

[5] Ibid., p. 8.

[6] Ibid., p. 13.

[7] Ibid., p. 17.

[8] People vs. Valera, 5 SCRA 910 (1962).

[9] People vs. Feliciano, 195 SCRA 19 (1991).

[10] People vs. Villamayor, 199 SCRA 472 (1991).

[11] People vs. Borja, 191 SCRA 120 (1990) citing People vs. Mancilla, 173 SCRA 373 (1989).

[12] People vs. Sarra, 183 SCRA 34 (1990).

[13] People vs. Dinola, 183 SCRA 493 (1990).

[14] People vs. Tereso, 194 SCRA 154 (1991).

[15] People vs. Dalinog, 183 SCRA 88 (1990).

[16] Decision, pp. 23-25; Rollo, pp. 55-57.

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